

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICK C. MCBROOM
Claimant

VS.

SENIOR AEROSPACE COMPOSITES
Respondent

and

ZURICH INSURANCE
Insurance Carrier

Docket No. 1,005,428

ORDER

Claimant appealed the October 8, 2002 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

Claimant alleges that he sustained injuries to both his back and his left knee while working for the respondent. Respondent admits claimant injured his back at work on or about April 18, 2002, and that respondent had actual notice of this accident. But, respondent denies claimant's left knee condition is work related and that timely notice of that injury was given. Finding that claimant failed to provide timely notice of any knee injury, the Judge denied claimant's request for benefits regarding the knee. Respondent agreed to provide medical treatment for the back, but temporary total disability compensation was denied.

The issue before the Appeals Board (Board) on this appeal is whether notice was timely given for claimant's left knee injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds that the preliminary hearing Order should be reversed as to notice and remanded to the ALJ for a determination of whether the alleged knee injury arose out of and in the course of claimant's employment with respondent.

On April 19, 2002, claimant reported back symptoms to Mr. Scott Vincent Wood, respondent's human resource manager. Claimant was taken to the Minor Emergency Center (MEC) that same day. Claimant also received followup treatment from the MEC physicians, including prescription medications and physical therapy, until approximately May 1, 2002. Claimant was laid-off from his employment with respondent on July 19, 2002, which was also his last day worked. Later the same day as his lay-off, claimant telephoned Mr. Wood and requested additional treatment for his back. Because claimant had reported to Mr. Wood on May 7, 2002 that his back symptoms had resolved, this request for additional treatment was denied. Claimant then went to his personal physician, Dr. T. L. Summerhouse, on July 30, 2002, for both the back and knee pain, and was taken off work. On July 31, 2002, claimant received MRI studies of his lumbar spine and left knee.¹

Claimant's counsel sent to respondent a Notice of Intent letter dated July 23, 2002, demanding temporary total disability and authorized medical treatment. When those benefits were not forthcoming, claimant's counsel sent an Application for Hearing dated 7/31/02 that was received by the Division of Workers Compensation on August 5, 2002. It alleged a series of accidents and injuries to claimant's back beginning "Approx. April 2002 and each and every working day thereafter through 7/19/02." The original Application for Hearing bears a handwritten note dated 8-7-02 amending the claim to include injury to the left leg.² The administrative file also contains a copy of a letter and Amended Application for Hearing, both dated August 1, 2002 and stamped "Received Aug. 02, 2002" by the Division of Workers Compensation which describe the claimant's injuries as "Back and left leg."³

¹ P.H. Trans., Resp. Ex. 3.

² P.H. Trans., Resp. Ex. 1.

³ However, the administrative file also contains a letter dated August 7, 2002 from the Division of Workers Compensation returning the amended Application for Hearing to claimant's counsel with the message "I am returning your amended E-1 per your instructions. I made the amendment when I made up the docket."

Regarding the alleged knee injury, the record includes the following questions and answers:

Q. (Mr. LaForge) After the day you hurt your back, after the accident on the 18th or 19th, whatever it was, did you have any other work related accidents where you hurt yourself?

A. (Rick McBroom) Well, my knee was going bad on me. It kept hurting, too, but I didn't report that.

Q. Okay. Did you have an accident that made you [sic] knee start to hurt?

A. I think I did it the same day whenever I did the back injury but I just - - I didn't think nothing big of the knee because it really didn't bother me like my back. I was more concerned about my back. ⁴

Q. (Mr. LaForge) What makes you think that you hurt your knee at the same time [as your back]?

A. (Rick McBroom) Well, because it swelled up that night when I went home. ⁵

Q. (Mr. LaForge) The pain that you're having in your knee right now, when did it start?

A. (Rick McBroom) It started about the same time my back injury, but my back injury was more sharp pain than my knee so I wasn't really concerned about my knee. It was my back I was concerned about. ⁶

Claimant's left knee injury may not have been caused solely by the specific accident described, but also by the work he performed for respondent on a daily basis. An injury is compensable under the Workers Compensation Act even where the accident only

⁴ Claimant's Depo at 26-27.

⁵ Claimant's Depo at 27.

⁶ Claimant's Depo at 30.

serves to aggravate a preexisting condition.⁷ The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.⁸ A subsequent aggravation can be compensable as a direct and natural consequence of the original injury and separate notice of accident is not required.⁹ Finally, K.S.A. 44-520 requires notice of the accident. It does not require notice of each and every body part allegedly injured as a result of the accident.

Respondent and its insurance carrier admit that claimant suffered a work-related injury to his back and admit receiving timely notice of the accident. Because respondent admits timely notice of the accident, it cannot deny timely notice that the accident caused injury to claimant's knee in addition to his back. Notice of accident covers all body parts injured as a result of the accident.

Respondent and its insurance carrier deny the compensability of the knee injury. The Administrative Law Judge denied benefits for the knee injury based solely on a lack of timely notice. As a result, the issues of whether the knee injury is work-related and whether the knee was injured as a result of the same accident or accidents that injured claimant's back were not decided by the Administrative Law Judge. Therefore, this matter should be remanded to the Administrative Law Judge for further findings and orders on those and any other remaining issues.¹⁰

WHEREFORE, the Appeals Board reverses the October 8, 2002 preliminary hearing Order entered by Administrative Law Judge John D. Clark, and remands this case to Judge Clark for a determination of the remaining issues.

IT IS SO ORDERED.

Dated this _____ day of January 2003.

BOARD MEMBER

⁷ *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

⁸ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁹ *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

¹⁰ K.S.A. 44-555c(a) and K.S.A. 44-551(b)(2)(A).

c: Chris A. Clements, Attorney for Claimant
Kim R. Martens, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation